

86th Legislative Session – 2011

Committee: Senate Health and Human Services

Monday, January 31, 2011

P - Present
E - Excused
A - Absent

Roll Call

P Hunhoff (Jean), Chair
P Holien
P Bradford
P Kraus, Vice-Chair
P Krebs
P Rave
P Schlekeway

OTHERS PRESENT: See Original Minutes

The meeting was called to order by Senator Jean Hunhoff, Chair.

MOTION: TO APPROVE THE MINUTES OF WEDNESDAY, JANUARY 26, 2011.

Moved by: Schlekeway
Second by: Rave
Action: Prevailed by voice vote.

MOTION: CONFIRM APPOINTMENT OF AMY IVERSEN-POLLREISZ OF HUGHES COUNTY, PIERRE, SOUTH DAKOTA, TO THE POSITION OF INTERIM SECRETARY OF THE DEPARTMENT OF HUMAN SERVICES.

Moved by: Kraus
Second by: Schlekeway
Action: Prevailed by roll call vote. (7-0-0-0)

Voting Yes: Hunhoff (Jean), Holien, Bradford, Kraus, Krebs, Rave, Schlekeway

SB 22: provide for the regulation and licensure of birth centers.

Presented by: Doneen Hollingsworth, Department of Health (Handout: 1)
Proponents: Dave Hewett, SD Association of Healthcare Organizations
Debbie Pease, SD Safe Childbirth Options Inc
Dean Krogman, SD State Medical Association
Brittany Novotny, SD Nurses Association
Kristin Aschenbrenner, SDANW

Bob Stahl, Department of Health, Answered Questions

MOTION: DO PASS SB 22

Moved by: Schlekeway
Second by: Rave
Action: Prevailed by roll call vote. (6-1-0-0)

Voting Yes: Hunhoff (Jean), Bradford, Kraus, Krebs, Rave, Schlekeway

Voting No: Holien

SB 117: provide for certain restrictions for the use of tanning devices by minors.

Presented by: Senator Stanford Adelstein
Proponents: Dr. Warren Redmond, Self, Aberdeen (Teleconference)
Gene Burrish, Self, Sioux Falls (Handouts: 2, 3)
Dean Krogman, SD State Medical Association
David Hewett, SD Association of Healthcare Organizations
Brittany Novotny, SD Nurses Association
Opponents: Zach Neugebauer, Self, Sioux Falls (Handout: 4)
Pat Chadester, Self, Sioux Falls
Bob Riter Jr., Indoor Tanning Association

MOTION: DO PASS SB 117

Moved by: Kraus
Action: Died for lack of a second.

MOTION: DO PASS SB 117

Moved by: Bradford
Second by: Kraus
Action: Failed by roll call vote. (2-5-0-0)

Voting Yes: Bradford, Kraus

Voting No: Hunhoff (Jean), Holien, Krebs, Rave, Schlekeway

MOTION: DEFER SB 117 TO THE 41ST LEGISLATIVE DAY

Moved by: Rave

Second by: Holien

Action: Prevailed by roll call vote. (5-2-0-0)

Voting Yes: Hunhoff (Jean), Holien, Krebs, Rave, Schlekeway

Voting No: Bradford, Kraus

SB 118: expand medicaid eligibility for pregnant women and to provide an appropriation therefor.

Presented by: Senator Stanford Adelstein

Proponents: Ann Wilson, Voices for Children, Sioux Falls

Greg Boris, South Dakota Voices for Children

Opponents: Kim Malsam-Rysdon, Department of Social Services

MOTION: DEFER SB 118 TO THE 41ST LEGISLATIVE DAY

Moved by: Rave

Second by: Krebs

Action: Prevailed by roll call vote. (6-1-0-0)

Voting Yes: Hunhoff (Jean), Holien, Kraus, Krebs, Rave, Schlekeway

Voting No: Bradford

SB 128: require the Commission of Human Rights to meet no less than annually.

Presented by: Senator Angie Buhl

Proponents: Mitch Richter, Equality South Dakota

Representative Bernie Hunhoff

Opponents: James Marsh, Department of Labor

MOTION: AMEND SB 128

128ja

On the printed bill, delete everything after the enacting clause and insert:

"

Section 1. That § 20-13-1 be amended to read as follows:

20-13-1. Terms used in this chapter mean:

- (1) ~~"Commission," the South Dakota State Commission of Human Rights;~~
- (2) ~~"Commissioner," a member of the commission;~~
- (3) "Court," the circuit court in and for the judicial circuit of the State of South Dakota in which the alleged unfair or discriminatory practice occurred;
- (4) "Disability," a physical or mental impairment of a person resulting from disease, injury, congenital condition of birth, or functional disorder which substantially limits one or more of the person's major life functions; a record of having such an impairment; or being regarded as having such an impairment which:
 - (a) For purposes of §§ 20-13-10 to 20-13-17, inclusive, is unrelated to an individual's ability to perform the major duties of a particular job or position, or is unrelated to an individual's qualifications for employment or promotion;
 - (b) For purposes of §§ 20-13-20 to 20-13-21.1, inclusive, is unrelated to an individual's ability to acquire, rent or maintain property;
 - (c) For purposes of §§ 20-13-22 to 20-13-25, inclusive, is unrelated to an individual's ability to utilize and benefit from educational opportunities, programs and facilities at an educational institution.

This term does not include current illegal use of or addiction to marijuana as defined in subdivision 22-42-1(7) or a controlled substance as defined in subdivision 22-42-1(1);

- (5) "Educational institution," any public or private institution of education and includes an academy, college, elementary or secondary school, extension course, kindergarten, nursery, school system, and any business, nursing, professional, secretarial, technical, or vocational school, and includes any agent of such institutions;
- (6) "Employee," any person who performs services for any employer for compensation, whether in the form of wages, salary, commission, or otherwise;

- (7) "Employer," any person within the State of South Dakota who hires or employs any employee, and any person wherever situated who hires or employs any employee whose services are to be partially or wholly performed in the State of South Dakota;
- (8) "Employment agency," any person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer and includes any agent of such a person;
- (9) "Familial status," the relationship of individuals by birth, adoption, or guardianship who are domiciled together;
- (10) "Labor organization," includes any person, employee representation committee, plan in which employees participate, or other organization which exists wholly or in part for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment;
- (11) "Person," includes one or more individuals, partnerships, associations, limited liability companies, corporations, unincorporated organizations, mutual companies, joint stock companies, trusts, agents, legal representatives, trustees, trustees in bankruptcy, receivers, labor organizations, public bodies, public corporations, and the State of South Dakota, and all political subdivisions and agencies thereof;
- (12) "Public accommodations," any place, establishment, or facility of whatever kind, nature, or class that caters or offers services, facilities, or goods to the general public for a fee, charge, or gratuitously. Public accommodation does not mean any bona fide private club or other place, establishment, or facility which is by its nature distinctly private, except when such distinctly private place, establishment, or facility caters or offers services, facilities, or goods to the general public for fee or charge or gratuitously, it shall be deemed a public accommodation during such period of use;
- (13) "Public service," any public facility, department, agency, board, or commission, owned, operated, or managed by or on behalf of the State of South Dakota, any political subdivision thereof, or any other public corporation;
- (14) "Real estate broker" and "real estate salesman," real estate broker and real estate salesman as defined by § 36-21A-6 or as licensed pursuant to § 36-21A-47;
- (15) "Real property," any right, title, interest in or to the possession, ownership, enjoyment, or occupancy of any parcel of land, any building situated thereon, or any portion of such building;

- (16) "Unfair or discriminatory practice," any act or attempted act which because of race, color, creed, religion, sex, ancestry, disability, or national origin accords unequal treatment or separation or segregation of any person, or denies, prevents, limits, or otherwise adversely affects, or if accomplished would deny, prevent, limit, or otherwise adversely affect, the benefit or enjoyment by any person of employment, labor union membership, housing accommodations, property rights, education, public accommodations, and public services.

Section 2. That §§ 20-13-2 to 20-13-4, inclusive, be repealed.

Section 3. That § 20-13-5 be amended to read as follows:

20-13-5. The Division of Human Rights shall have the following powers and duties:

- (1) To appoint and prescribe the duties of such investigators and agents as the division shall deem necessary for the enforcement of this chapter.
- (2) To hire any secretarial, investigative, or other assistance that may be necessary to accomplish the ~~commission's~~ division's purposes.

Section 4. That § 20-13-6 be repealed.

Section 5. That § 20-13-21.2 be amended to read as follows:

20-13-21.2. It is an unfair or discriminatory practice to design or construct any multifamily dwellings with more than four units for sale, rent, lease, assignment, sublease, or transfer that do not enable accessibility to ground-floor common areas and usability of ground-floor housing units by disabled persons or by wheelchairs. If the building has elevators, all housing units and common areas shall be usable by disabled persons and persons in wheelchairs. The accommodations may include widened doors, lowered electrical switches and outlets, lowered environmental controls, grab bars or reinforcements, kitchens and bathrooms usable by the disabled. Nothing in this law may be construed to require prior approval of plans for construction by the Division of Human Rights ~~or the Commission of Human Rights~~.

Section 6. That § 20-13-22 be amended to read as follows:

20-13-22. It is an unfair or discriminatory practice for any educational institution:

- (1) To discriminate in any manner in its full use or in its benefits, or in its services against any individual because of race, color, creed, religion, sex, ancestry, disability, or national origin.
- (2) To include, expel, limit, or otherwise discriminate against any individual seeking

admission as a student, or an individual enrolled as a student because of race, color, creed, religion, sex, ancestry, disability, or national origin.

- (3) To make or use a written or oral inquiry, or form of application for admission that elicits or attempts to elicit information, or to make or keep a record, concerning the race, color, creed, religion, ancestry, disability, or national origin of an applicant for admission except as may be permitted by ~~regulations of the commission of human rights~~ rules.

Segregation by sex of athletic activities offered by an educational institution does not constitute discrimination on the basis of sex in violation of this chapter if the opportunity to participate in athletic activities offered by the educational institution is substantially equal for both sexes.

This section does not apply to any bona fide religious institution which has a qualification based on religion if such qualification is related to a bona fide religious purpose.

Section 7. That § 20-13-27 be amended to read as follows:

20-13-27. The ~~commission~~ division shall promulgate rules, pursuant to chapter 1-26, consistent with and necessary for the enforcement of this chapter pertaining to:

- (1) The administration of the division;
- (2) Complaints, investigations, findings, answers and hearings, and orders;
- (3) General ~~commission~~ division policies;
- (4) Tests in employee selection; and
- (5) Discrimination based upon sex, race, religion or creed, origin, ancestry, familial status, or disability.

Section 8. That § 20-13-29 be amended to read as follows:

20-13-29. Any person claiming to be aggrieved by a discriminatory or unfair practice may file with the Division of Human Rights a verified, written charge which shall state the name and address of the person or agency alleged to have committed the discriminatory or unfair practice. The charge shall set forth the facts upon which it is based, and shall contain any other information required by the division. ~~The Commission of Human Rights, a commissioner, a~~ A state's attorney; or the attorney general may file a charge.

Section 9. That § 20-13-32 be amended to read as follows:

20-13-32. After filing a verified charge, a true copy shall be served by registered or certified mail to the person against whom the charge is filed. A ~~commissioner or a duly authorized~~ Division of Human Rights agent shall promptly investigate the charge. If the investigating official determines that probable cause exists to support the allegations of the charge, the investigating official shall immediately endeavor to eliminate the discriminatory or unfair practice by conference or conciliation.

Section 10. That § 20-13-35 be amended to read as follows:

20-13-35. If the investigating official is satisfied that further endeavor to settle a charge by conference or conciliation is futile, ~~the official shall report the same to the Commission of Human Rights. If the commission determines that the circumstances warrant, it~~ the division shall issue a written notice requiring the respondent to answer the charge at a hearing to be set within a reasonable period of time before the commission, a commissioner, or any other person designated by the commission to conduct the hearing, hereinafter referred to as hearing examiner, and at a time and place to be specified in the notice. The notice shall include a statement informing the parties of their right to transfer the matter to circuit court as provided in § 20-13-35.1.

Section 11. That § 20-13-35.1 be amended to read as follows:

20-13-35.1. ~~No later than twenty days after the issuance of notice requiring the respondent to answer the charge, the~~ The charging party or the respondent may elect to have the claims asserted in the charge decided in a civil action, ~~in lieu of a hearing~~, under the provisions of this section.

Any civil action shall be filed within one year of such election. Upon receipt of notice of election, the Division of Human Rights ~~or the Commission of Human Rights~~ has no further jurisdiction over the parties concerning the charge filed. The Division of Human Rights ~~or the Commission of Human Rights~~ shall notify the parties in writing ~~of the election and~~ of the one year limitation period in which to file a civil action. The limitation period in which to file a civil action begins on the date of the notice of election. In a civil action, if the court or jury finds that an unfair or discriminatory practice has occurred, it may award the charging party compensatory damages. The court may grant as relief any injunctive order, including affirmative action, to effectuate the purpose of this chapter. Punitive damages may be awarded under § 21-3-2 for a violation of §§ 20-13-20 to 20-13-21.2, inclusive, 20-13-23.4, 20-13-23.7, or 20-13-26. Attorneys' fees and costs may be awarded to the prevailing party for housing matters.

Section 12. That § 20-13-36 be amended to read as follows:

20-13-36. ~~The commission, any commissioner, or any~~ Any investigator, agent, or hearing examiner appointed by the division is empowered to administer oaths; and take depositions as provided by §§ 1-26-19.1 and 1-26-19.2.

Section 13. That §§ 20-13-37 to 20-13-39, inclusive, and §§ 20-13-41 to 20-13-52, inclusive, be repealed."

Moved by: Kraus
Second by: Rave
Action: Was not acted on.

THE CHAIR DEFERRED SB 128 UNTIL WEDNESDAY, FEBRUARY 2, 2011.

MOTION: ADJOURN

Moved by: Schlekeway
Second by: Krebs
Action: Prevailed by voice vote.

Cindy Louder
Committee Secretary

Jean M. Hunhoff, Chair